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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,578	04/22/2003	Thomas Ping Hua Lee	01-10-1769	1859
23388	7590	12/27/2005	EXAMINER	
TROJAN LAW OFFICES 9250 WILSHIRE BLVD SUITE 325 BEVERLY HILLS, CA 90212			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

THM

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/039,578	LEE, THOMAS PING HUA
	Examiner Josiah Cocks	Art Unit 3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 May 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-6 is/are allowed.
- 6) Claim(s) 7 and 8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Response to Request for Reconsideration***

1. Receipt of applicant's response filed 5/11/2005 is acknowledged.

### ***Reissue Applications***

2. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 5,971,751 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,850,854 to Buck (“Buck”) in view of U.S. Patent No. 3,984,738 to Mohr (“Mohr”).

Buck discloses in the specification and figure 3 a piezoelectric lighter in the same field of endeavor as applicant’s invention and substantially as described in applicant’s claims 7 and 8. In particular, Buck shows a lighter including a fuel tank (82), a gas ejecting tip (93) communicating with the fuel tank, a piezoelectric unit (92) having an ignition tip (78) connected thereto capable of producing a spark to ignite fuel released from the gas ejecting tip, and a thumb push cap (86) capable of activating the piezoelectric unit. Buck further discloses a pressure absorbing device (unnumbered spring to the right of pivot 84 in Fig. 3) that is positioned to engage an underside of the thumb push cap to impede movement of the cap and provide an upward force that would additional to any upward force provided by the piezoelectric unit.

In regard to the limitation that the piezoelectric unit includes a mechanism for providing an upward force for urging the thumb push cap into an upper normal position, it is inherent that the plunger (91) of piezoelectric unit (92) of Buck would be urged upward by a mechanism internal to the piezoelectric unit as such a mechanism is necessary for the operation of the unit. Mohr is cited simply to provide a description of the structure and operation of a piezoelectric unit that is identical to the piezoelectric unit of Buck. Referring to Mohr, as is well understood the piezoelectric unit of a lighter includes an internal spring (111) that applies an upward returning force to plunger/actuating member (114) once the plunger/actuating member has been depressed to produce a spark (see Mohr, col. 3, lines 17-39).

***Allowable Subject Matter***

5. As previously indicated, claims 1-6 are allowable.

***Response to Arguments***

6. Applicant's arguments filed 5/11/2005 have been fully considered but they are not persuasive. Applicant argues that unnumbered spring to the right of pivot 84 in Fig. 3 of Buck does not constitute pressure absorbing device as claimed. To this end applicant states:

"The 'unnumbered spring', however, does not impede the movement of the thumb push cap, as was not designed to provide any upward force." (see page 4 of the 5/11/2005 response).

The examiner does not agree. The unnumbered spring is clearly shown in Fig. 3 of Buck to be connected to the thumb push cap (86) via a lever extending from the pivot (84) and a unnumbered shaft extending downward from the push cap (86). Therefore this spring clearly impedes the movement of the thumb push cap. Further, applicant's suggestion that this spring does not provide an upward force is simply untenable. The very purpose of such a spring is to provide an upward force. Though the spring illustrated in Fig. 3 of Buck is not described, this spring functions for the same purpose, for instance, as spring (50) shown in Figure 2. The purpose of this spring (50) is to provide a force acting on a lever of a pivot to return a valve to a closed position (see Buck, col. 3, lines 11-19). A person of ordinary skill in the art would recognize that the unnumbered spring shown in Fig. 3 of Buck provides a force to the lever arm of pivot (84), which in this case results in an upward force applied to this lever arm. As noted above, since the lever arm is in contact with the numbered shaft portion of the thumb push cap (86), the spring is applying an upward force to this cap. In applying this force to the cap, the

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spring is necessarily providing additional resistance to depression of the cap and thereby impedes movement of the cap.

Applicant also argues that the combination of Buck and Mohr is improper. However, as was seemingly noted by applicant (see response, p. 6, lines 21-22), the examiner is not relying on the teachings of Mohr in combination with Buck. Instead, Mohr has been cited as in support of the assertion that all piezoelectric units found in lighters necessarily include an internal spring that functions to return the actuating plunger to an initial position. The following is an excerpt from MPEP § 2112:

**2112 [R-2] Requirements of Rejection Based on Inherency; Burden of Proof**

The express, implicit, and inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. 102 or 103. "The inherent teaching of a prior art reference, a question of fact, arises both in the context of anticipation and obviousness." *In re Napier*, 53 F.3d 610, 613, 34 USPQ2d 1782, 1784 (Fed. Cir. 1995) (affirmed a 35 U.S.C. 103 rejection based in part on inherent disclosure in one of the references). See also *In re Grasselli*, 713 F.2d 731, 739, 218 USPQ 769, 775 (Fed. Cir. 1983).

In this case, the examiner has relied upon a rejection on the basis of 35 U.S.C. 103 in rejecting applicant's claims on the basis of Buck, with Mohr cited as evidence of the inherency of an internal spring in the piezoelectric unit of Buck.

Applicant's argument that Mohr "has nothing to do with a child resistant cigarette lighter" (response, p. 6) is simply irrelevant to the reasoning for the citation of Mohr, i.e. in showing the inherency of an internal spring in piezoelectric units. Further, applicant's statement that the "Buck and Mohr devices are used for different purposes" (response, p. 7) is wholly contrary to the plain disclosure of both of these references. Buck clearly shows a cigarette lighter that includes, among other things, a conventional piezoelectric unit to generate a spark.

Mohr discloses a conventional piezoelectric unit, expressly for lighters (see Mohr, col. 1, lines 5-9) that demonstrates that such a piezoelectric unit necessarily includes an internal spring.

Accordingly, applicant's claims 7 and 8 do not distinguish over the prior art of record.

*Conclusion*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc  
November 2, 2005



JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749